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C O N F I D E N T I A L SECTION 01 OF 04 BISHKEK 001296

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DEPT FOR SCA/CEN

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TAGS: [PGOV](#) [PREL](#) [KG](#)

SUBJECT: KYRGYZSTAN REFERENDUM IS "JUST POLITICS"

REF: A. BISHKEK 1270

[1](#)B. BISHKEK 1184

[1](#)C. BISHKEK 1170

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Classified By: Amb. Marie L. Yovanovitch, Reasons 1.4 (b) and (d).

[1](#)1. (SBU) SUMMARY: Kyrgyzstan will hold a nationwide referendum on a new constitution and new electoral code on October 21, despite a recommendation from the parliament that the vote be postponed. The proposed constitution closely resembles the recently annulled December 2006 constitution, but it further tilts the balance of power in favor of the presidency. It also provides that the parliament be elected entirely on a proportional basis by party lists. The proposed electoral code sets a high threshold for parties to obtain seats in parliament: 5% of the total number of registered voters, as well as 0.5% of registered voters in each oblast, Bishkek, and Osh. A number of analysts have expressed concern about the haste of the referendum and about certain provisions in the drafts, and some opposition figures have urged supporters to vote against the new constitution, but most expect that the constitution and electoral code will be approved.

[1](#)2. (SBU) Parliamentarians and other political figures are looking beyond the referendum and focusing on expected parliamentary elections. Following the referendum, it is likely that the parliament will be dissolved and new elections called, possibly as soon as December. With the new parliament to be elected on a party list basis, parliamentary deputies are scrambling to secure places on party lists, and smaller parties are looking to merge. On October 15, President Bakiyev established his own political party, "Ak Jol Kyrgyzstan," bringing together members of several pro-presidential parties. Several opposition parties, including Ata Meken, Ak Shumkar, and Asaba are also discussing the possibility of uniting. Prime Minister Atambayev's Social Democratic Party announced it would run on

its own. END SUMMARY.

#### A New Constitution -- What Would It Change?

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¶3. (SBU) In November and December 2006, Kyrgyzstan adopted two new versions of the constitution, both hastily drafted and passed by parliament and signed by the president. On September 14, the Constitutional Court invalidated these versions on procedural grounds, returning the country to the 2003 constitution (with its strong presidential authority and which itself was adopted by a flawed referendum). On September 19, President Bakiyev announced that a national referendum would be held on October 21 to consider a "new version" of the constitution and a new election code.

¶4. (SBU) Bakiyev's draft is similar in most respects to the annulled December 2006 constitution. The draft keeps the split executive branch, with the president and his administration on one side, and the prime minister and his cabinet on the other. However, the draft appears further to strengthen presidential authority over the government, the parliament, the judiciary, and local administrations compared to the December constitution. Under Bakiyev's draft, the president has the right to dismiss members of the government or the whole government on his own initiative. The president appoints directly the defense, national security, internal and foreign affairs ministers; other ministers are nominated by the prime minister and appointed by the president. The president nominates members of the supreme and constitutional courts, subject to the approval of the parliament, and the president appoints and dismisses local judges on the proposal of the National Council for Judicial Affairs. Under the proposed draft, the president keeps the authority to appoint and remove the heads of local administrations (rayon level), but the heads of local administrations gain the authority to

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appoint the heads of village districts and regional towns (previously elected by local elected councils), strengthening vertical power and presidential control of local administration.

¶5. (SBU) The proposed draft expands the parliament from 75 to 90 members, with all deputies elected on a proportional basis by party lists. The deputies from the party with over 50 percent of the seats nominate the prime minister, but if they fail to do so, the president can select another party to nominate the prime minister. Parliamentary deputies would be under the strict control of their parties, as the mandate belongs to the party, not the individual. A deputy would lose his seat (and immunity) if he is expelled or withdraws from his party, or if the party ceases activity (that is, the party is de-registered by the Ministry of Justice). This provision gives the executive substantial influence over parliament.

#### Electoral Code Sets High Threshold

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¶6. (SBU) The draft electoral code, also to be voted on in the referendum, sets a very high threshold for a party to obtain seats in parliament. A party must get 5% of the total number of registered voters (not 5% of votes cast), and the party must get at least 0.5% of registered voters in each of the seven oblasts, in Bishkek, and in Osh, in order to enter parliament. This provision gives broad latitude to the Central Election Commission (CEC) to disqualify parties that "fail" to meet all these conditions. Depending on voter turnout, the effective threshold could be much higher than 5%. (For example, with 50% turnout, the threshold would be 10% of the votes cast.) The draft code makes provision for women, minority, and youth participation. No more than 70% of candidates on a party's list can be of the same gender, with no more than three candidates in a row of the same gender. (Note: the current parliament has no women.) At

least 15% of the candidates must be under age 35 and 15% from national minorities, although their place on the party lists is not specified.

#### Preparations for the Referendum

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17. (C) Having had only a month to prepare for the referendum, the Central Election Committee (CEC) is struggling to get ready the 2300 polling stations and ballots for 2.7 million registered voters. OSCE and IFES (with USAID funding) provided support to the CEC in preparing information brochures for voters and manuals for poll workers. Voter lists, however, have not been updated in some areas, and one CEC member told the press that they had discovered deceased voters on a number of lists. (Note: voter lists are based on the residency registrations kept by local governments.) There is also uncertainty about how many votes will be required for the constitution and electoral code to pass. According to the Soviet-era law on referenda, a measure must obtain the approval of over 50% of all registered voters. According to the presidential decree calling this referendum, voter turnout must be at least 50% and the measure must obtain at over 50% of the votes cast. With an estimated 500,000 to 800,000 Kyrgyz working abroad and little provision made for them to vote, reaching the required 50% turnout will be difficult, and there may be pressure on election officials -- and the Kyrgyz embassies in Russia and Kazakhstan -- to report high voter participation figures.

#### Politics of the Referendum

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18. (C) Ever since the "tulip revolution" of March 2005, constitutional reform has been at the center of the political debate in Kyrgyzstan. Various commissions and working groups

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have put forward a range of constitutional proposals, and opposition demonstrations led to (temporary) constitutional compromises by the Bakiyev administration. By calling this referendum on short notice, Bakiyev is moving to settle this debate once and for all by pushing through a version that suits his interests. Voters have little choice: vote "yes" to the draft constitution with strong presidential powers, or vote "no" and keep the 2003 constitution with very strong presidential powers. Either way, Bakiyev appears to win.

19. (C) While some political figures, including Prime Minister Atambayev, have called Bakiyev's draft a "step forward," a number of analysts and opposition figures have criticized it for augmenting presidential authority. Former Foreign Minister Muratbek Imanaliyev complained that the draft ignored the suggestions of constitutional experts, and the hasty referendum meant that people were voting blind. Opposition MP Kubatbek Baibolov warned in an open letter that the referendum results would be disputed because it would be conducted in violation of existing laws, and he said that the draft undercut the benefits of election by party list because of the increased presidential authority. Constitutional expert Gulnara Iskakova criticized the draft for, among other faults, "practically abolishing" local self-governance. And analyst Tamerlan Ibraimov noted that the draft makes impeachment of the president nearly impossible, because the (presidentially appointed) prosecutor general must support any charges put forward by parliament.

110. (C) Despite the criticism of the draft, there has been little organized opposition to the referendum. Ak Shumkar party leaders MP Temir Sariyev and MP Baibolov urged their supporters at a party conference to vote against the constitution and electoral code. Deputy Speaker of Parliament Alymbekov urged voters to boycott the referendum to prevent reaching the necessary 50% turnout. On the other hand, Prime Minister Atambayev's Social Democratic Party is conducting a "vote yes" information campaign.

¶11. (C) Presidential Chief of Staff Sadyrkulov told the Ambassador that the referendum was "just politics." When asked why this referendum would succeed when previous referenda (in the Akayev era) had laid the groundwork for future problems, Sadyrkulov responded that "this time it's going to be different because the people agree with us." Turning to the electoral code, Sadyrkulov said that the requirement that a party must get 0.5% of the vote in each oblast was aimed to blunt the Sodruzhestvo party, whose support comes from ethnic Uzbeks but was "established and financed by the (Russian) FSB." With the high concentration of ethnic Uzbeks in the south, Sadyrkulov estimated that Sodruzhestvo could gain 25 seats in parliament if it ran on its own, and 25 seats "controlled by the FSB" was not acceptable. But because Sodruzhestvo lacks any constituency outside the south, the regional minimum requirement forced Sodruzhestvo to the table with the president's new party.

¶12. (C) Sadyrkulov did acknowledge that there were problems with some provisions, and he told the head of the OSCE Bishkek office, Ambassador Mueller, that he was forming a working group to make changes to the rules on party deregistration and the imperative mandate of parties in parliament. It is not clear if these changes will be made prior to or after the referendum, but such changes raise questions about whether voters will know what they are voting on.

#### Focus on Early Elections

¶13. (C) Following the referendum, the government will resign according to the transitional provisions of the new constitution. Sadyrkulov confirmed that Atambayev and all his ministers would continue in an acting capacity. It is

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widely expected that Bakiyev's next move will be to dissolve the parliament (either directly or through pro-presidential deputies forcing dissolution) and call early elections. While Sadyrkulov would not confirm parliamentary elections, he hinted broadly that this would be the case. Most believe that elections will be held on December 16.

¶14. (C) Many current MPs appear more focused on gaining a place on a potential party list for their political survival than on details of the constitution draft or raising questions about the referendum procedure. MP Iskhak Masaliyev (who supports the referendum, though he acknowledges that it's not being carried out according to the law) told us that deputies were working "feverishly" to prepare for elections. A parliamentary staffer indicated that large sums of money were changing hands in the scramble by current deputies to be placed on party lists.

¶15. (C) With the increased role for political parties under the new constitution, and the potentially high threshold to enter parliament, many smaller parties are reportedly looking at ways to merge or consolidate. On October 15, President Bakiyev established his own political party, "Ak Jol Kyrgyzstan," bringing together members of several pro-presidential parties. Some pro-presidential parties, including Sodruzhestvo, Moya Strana, and the Labor and Unity party, have said that they may join Ak Jol, pending decisions by their party conferences (or, in Sodruzhestvo's case, instructions from Moscow). Several opposition parties, including Ata Meken, Ak Shumkar, and Asaba are also reportedly discussing the possibility of uniting. Prime Minister Atambayev's Social Democratic Party announced it would run on its own.

#### Comment

¶16. (C) These moves by Bakiyev -- a pro-presidential draft

constitution and the formation of a new presidential political party -- raise questions whether Kyrgyzstan is moving toward democracy or toward "managed democracy." The hasty manner in which the referendum is being conducted also raises questions, leaves the process open to future legal challenges, and makes it unlikely that this referendum will bring an end to the constitutional reform debate. Constitutional Court Chair Cholpon Bayekova confided to the Ambassador on October 16 that there were risks to moving so quickly, and she did not think that this would be the last constitution. When the Ambassador raised concerns about the process with Sadyrkulov, stressing the importance of a balance of powers and a level playing field, Sadyrkulov responded that Kyrgyzstan faced serious problems in the south and with certain neighbors, and that the country needed "stronger tools" to deal with those problems. Nevertheless, Sadyrkulov said, the country was moving "step by step" toward democracy. The normally avuncular Sadyrkulov was more sensitive to criticism than usual, indicating perhaps that the game plan may not be proceeding as smoothly as suggested. Despite Sadyrkulov's analysis that "this time will be different," this referendum may just postpone the power struggles to a later date. At the least, the questionable legal basis of the referendum lays the groundwork for future legal and political challenges to Bakiyev.

YOVANOVITCH